CF0000061813

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CRIMINAL APPEAL NO. 144 /1997

APPELLANTS - 1. Raghvendra son of Shri Ramkripal Agrawal, Aged 29 years, Occupation - Cydle Repairing Shop.

Accused in Jail. 2. Virendra Kumar son of Shri Ram Kripal Agrawal, aged 32 years, Occupation- Sabji Badi.

3. Shiv Kumar son of Shri Ramkripal agrawal, Occupation, Agriculture, aged 34 years.

All resident of Village Khokhli Police Station - Bhatapara, Distt. Raipur (M.P.)

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Filed on 20.1.97

by Shri G.P. Singh Advocate

20.1.97

Ku. A.R.

V/s

RESPONDENTS - State of Madhya Pradesh Through Police Station Bhatapara District Raipur (M.P.)

CRIMINAL APPEAL U/S 374(2) of CODE OF CRIMINAL PROCEDURE.

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आदेश पत्रक

मामला क्रमांक Cr. App. No. 140/97 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

5.4.2006

Miss Sangeeta Mishra, Mr. Pankaj Shrivastava, Mr. Ajay Dwivedi and Mr. Shyam K Chandani, Advocates for appellant No.1.

Mr. Surendra Singh, Sr. Advocate with Shri Neeraj Mehta, Advocate for appellants No.2 & 3.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. D.K. Gwalrey, Dy. Govt. Advocate for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. accused/appellants have questioned the legality and correctness of the judgment of conviction and order of sentence dated 18th January, 1997 passed by learned Additional Sessions Judge, Baloda Bazar, in S.T. No. 103/92, whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 304-B of the I.P.C., sentenced each of the accused/appellants to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year.

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The prosecution case, in brief, necessary for disposal of this appeal is that deceased Sita alias Veena was married to accused/appellant No.1- Raghvendra in the month of May, 1987 at Champaran and thereafter she used to reside in her matrimonial home. In the morning of 5.4.1991 one person came to Bilaspur and informed Girdharilal Agarwal (PW-1), father of deceased, that Sita has received burn injuries upto 80%. On receiving this information, Girdharilal Agarwal (PW-1) along with his wife Shashikiran (PW-10) and brother Keshav Kumar (PW-5) reached Bhatapara. On reaching Bhatapara they came to know that Sita alias Veena has already died and her body is lying in the mortuary. Girdharilal (PW-1) went to the mortuary, saw the dead body of Sita alias Veena and observed that Sita was murdered and thereafter she has been set on fire after pouring kerosene on her body.

On receiving intimation from the Government Hospital, Bhatapara, the Station House Officer, Police Station Bhatapara registered the merg intimation No.4/91 (Ex.P-12). Thereafter, the S.D.O. (P) took up the investigation on merg intimation No. 4/91, prepared the Panchnama (Ex.P-2) of the dead body of deceased and recorded the statements of family members of deceased namely Girdharilal Agarwal (PW-1), Keshav Kumar (PW-5) & Shashikiran (PW-10). Girdharilal Agarwal (PW-1) gave a letter (Ex.P-1) in writing to the police in which he mentioned that today at about 9.15 a.m. he received information that his daughter has

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received burn injuries upto 80% and on reaching place of occurrence he came to know that his daughter has already died. He was also informed that the dead body of his daughter has been taken to the mortuary for the purpose of postmortem. After seeing the dead body of his daughter, he reached to the conclusion that firstly, his daughter has been murdered and thereafter she has been set on fire after pouring kerosene on her body. Therefore, following persons namely Raghvendra, husband of his daughter, Shivkumar Agarwal, brother-in-law of his daughter, Virendra Kumar Agarwal, younger brother-in-law of his daughter and mother-in-law of his daughter be arrested immediately. He has suspicion that the main cause of murder of his daughter was dowry and as the marriage was solemnized by accused Raghvendra against the wishes of his brothers.

Based on above, on 6.4.1991 the Station House Officer, Police Station Bhatapara registered the F.I.R. (Ex.P-14) under Crime No.57/91 for commission of offence under Section 306 of the I.P.C. During investigation, the Investigating Officer took into possession the copy of inland letter (Ex.P-6) under Ex.P-3, one half burnt chadar, quarter kilo ash, one half burnt underwear of Dora make, one jericane containing 2 liter kerosene, one match box, pieces of burnt hairs, one chair, soil from the place of occurrence and one piece of burnt under Ex.P-4 and one sewing machine & bicycles under Ex.P-5. Dr. K.L. Gopawar and Dr. P.

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Mukandan Assistant Surgeons of Primary Health Centre Bhatapara conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-7. On enquiry by the Investigating Officer, doctor gave the opinion Ex.P-8 in which he mentioned that in his opinion the mode of death is suicidal in nature. Site plan Ex.P-15 was prepared. Recovered articles were sent for examination by Forensic Science Laboratory, Sagar, from where report Ex.P-19 was received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, Baloda Bazar for commission of offence under Sections 306 read with Section 34 of the I.P.C. against the accused persons, who in turn committed the case to learned Sessions Judge, Raipur, from where learned Additional Sessions Judge, Baloda Bazar received the case on transfer for trial. Learned Additional Sessions Judge after hearing the respective counsel and perusal of record was of the opinion that prima-facie offence under Section 304-B in the alternative Section 306 of the IPC was made out against the accused persons and accordingly, he framed the charge against the accused for the aforesaid offences. The accused/appellants have abjured the guilt.

The prosecution in order to establish the charge against the accused persons examined as many as 18 witnesses. Statements of accused persons were recorded under Section 313 of the Cr.P.C. in which

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the accused persons admitted that Raghvendra was married to Sita alias Veena in the month of May, 1987, however, they denied the allegations of beating & demand of dowry and further stated that they have implicated in a false crime. Accused Virendra has stated that he, his brothers and Raghvendra are residing separately.

Learned Additional Sessions Judge after hearing learned counsel for respective parties, convicted and sentenced the accused persons as mentioned in Para-1 of this judgment. However, no finding was recorded in respect of offence under Section 306 of the I.P.C.

We have heard Miss Sangeeta Mishra, Mr. Pankaj Shrivastava, Mr. Ajay Dwivedi and Mr. Shyam K Chandani, Advocates for appellant No.1, Mr. Surendra Singh, Sr. Adv. with Mr. Neeraj Mehta, Advocate for the appellants No.2 & 3 and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. D.K. Gwalrey, Panel Lawyer on behalf of the State/respondent.

The question regarding death of deceased Sita alias Veena on account of extensive burn injuries is not in dispute.

As far as the involvement of accused/appellants in commission of crime under Section 304-B of IPC is concerned, learned Sr. Advocate for accused/appellants No.2 & 3 argued that in order to establish charge under Section 304-B of IPC the prosecution has examined PW-1

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Girdharailal Agarwal, father of deceased; PW-5 Keshav Kumar, uncle of deceased & PW-10 Shashikiran, mother of deceased and from perusal of their evidence, it is clear that the prosecution has not been able to establish the fact that deceased was subjected to cruelty or harassment by the accused persons in connection with any demand for dowry soon before her death. Therefore, the finding of the trial court is not based on any legal evidence and the accused persons have been wrongly convicted for the said offence.

On the other hand, learned Addl. Public Prosecutor along with Dy. Govt. Advocate for the State supported the judgment of trial court.

In order to bring the offence within the four corners of Section 304-B of the IPC, the death of a woman must be caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Section 113-B of the Evidence Act, 1872 envisages that:

> " When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such

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person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death."

Now we shall proceed to scrutinize the evidence adduced by the prosecution in order to ascertain as to whether the prosecution has been able to satisfy the above requirements of Section 304-B of the IPC by adducing evidence on record.

The question of death of deceased within a period of seven years from the date of her marriage is not in dispute, as it is an admitted fact that deceased was married with accused/appellant No.1 Raghvendra in month of May, 1987 and she died on account of extensive burn injuries on 5.4.1991. From the evidence it is also established that Sita alias Veena received burn injuries in her bedroom, which was bolted from inside and the body of deceased was taken out after breaking open the door.

PW-2 Lakshman has stated that at about 7-8 a.m. in the morning he was sitting in his shop, at that time Shivkumar's wife & Bijau Rawat came saying that there is a fire, on which he rushed towards the house of Raghvendra, number of persons were standing there. Wife of Raghvendra was burning in the ground floor room and the door of room was closed from the inside. He broke open the door with a pickaxe and

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saw that wife of Raghvendra was burning, at that time Raghvendra was at his shop, whereas Shivkumar & Virendra were in the kitchen garden of the house. They extinguished the fire, thereafter the accused persons came, and they took the deceased to Bhatapara hospital. Similar is the evidence of PW-3 Bijau Rawat.

Therefore, from the above evidence it stands established that deceased herself set her on fire after pouring kerosene on her body.

Now the question remains as to whether the prosecution has been able to establish that the accused persons subjected Sita alias Veena to cruelty or harassment soon before the date of incident in connection with the demand of dowry.

PW-1 Girdharilal Agarwal, father of deceased, has stated that on receiving information he reached to Bhatapara and thereafter he went to the mortuary. He lodged the report Ex.P-1 in the police station. In Para-4 of evidence, this witness has stated that Veena was to be married with Raghvendra on 28.2.1987, but on account of demand of dowry marriage could not be solemnized. Again in the month of May, 1987 accused Raghvendra all alone came to him and said that he is ready for marriage on any terms and even he is ready to marry Sita in a temple. On which he replied that if his brothers are ready then & then only he will marry Sita with him. Thereafter, elder brother of Raghvendra came to Bilaspur and gave his consent regarding marriage of Veena with

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Raghvendra. He also said that if other brothers will not participate in the marriage, then he, being the elder brother of Raghvendra, ensure that Veena is married to Raghvendra. The elder brother of Raghvendra engaged Veena with Raghvendra after 4-5 days Veena was married with Raghvendra at Champaran, she started living in her matrimonial house and in between she came 5-6 times to his house. In what condition she was residing in the matrimonial house, he did not talk about that to Veena. Again he said that at the time of marriage it was agreed that 10 bicycles will be given in the dowry and accordingly, he gave six bicycles and Rs.2,500/- in lieu of four bicycles. Bicycles were demanded in order to enable Raghvendra to earn his livelihood, as he was unemployed. Further, he has stated that accused persons had beaten his daughter 2-3 times and she was made to run away. First time she came all alone, second time she came with one Patel and third time brother of Raghvendra came following his daughter. His daughter informed him that members of her matrimonial house have beaten her and even once on account that her four months pregnancy was terminated. Once Raghvendra said her daughter a prostitute in his presence, on which he persuaded Raghvendra not to talk like this in front of him. In the cross-examination, this witness has stated that at the time of marriage his wife was not at the residence, most of the happenings were being communicated by the deceased to her mother and in turn his wife used

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to tell him. He also used to tell all things to his wife, which were being communicated to him by his daughter.

There is not an iota of evidence in the above evidence of PW-1 Girdharilal Agarwal regarding demand of dowry by accused persons soon before the date of incident i.e. 5.4.1991 and that Sita was subjected to cruelty or harassment in connection with demand of dowry. Whatever has been stated that relates to the year 1987 and for that also it seems that bicycles were given in order to ensure that Raghvendra could earn his livelihood by running the cycle shop. Even PW-5 Keshav Kumar, uncle of deceased and brother of PW-1 Gridharilal, has not stated in his evidence that any demand of dowry was made by the accused persons soon before the death of Sita alias Veena. He has also stated regarding giving of bicycles at the time of marriage, which was solemnized in the year 1987 i.e. 4 years before the date of incident.

PW-10 Shashikiran Agarwal has stated in para-3 of her evidence that one month before the incident there was some Puja ceremony at her residence, at that time her daughter came to Bilaspur. She disclosed her that in the name of dowry whole family members of her in-laws are harassing, they are demanding colour television, scooter, gold & silver ornaments and gas-stove, they are beating her, not providing food & clothes to her and on many occasions they had ousted her from the house. She has already purchased television and gas stove to give the in-

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laws of her daughter. She has further stated that 10 cycles, one sewing machine, one pearl, silver bangles, golden locket of child, one 7 gm gold bindiya and one gold ring were already given and even golden chain was also given to her daughter. Accused Shiv, Raghvendra, Ashok Beena, who is wife of Shiv, sister Mithila and wife of Ashok all used to say that they will arrange second marriage. In para-6 of her evidence, she has again stated that her daughter died within a period of 5 years from the date of marriage. Her daughter used to appreciate her husband, she never disclosed anything on her own, but after observing from her face when they used to enquire from her then she used to tell and just before one month of her death, she disclosed the above things. In Para-11 of the cross-examination she has stated that one month before the incident Puja was being performed in her house, her daughter & son-in-law both came to her house. Her daughter stayed for 9 days, whereas his son-in-law had not stayed for 9 days. He again came to her house and after completion of puja her daughter and son-in-law went together.

If we closely scrutinize the above evidence of PW-10 Shashikiran, the evidence of Shashikiran (PW-10) does not inspire confidence of the court, for the reasons that in the first instance, she has given omnibus statement that in-laws of Sita were demanding dowry, but she has not specifically named the accused person, who demanded the dowry. Moreover, as per her own evidence his son-in-law Raghvendra came to

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her house at the time of Puja, but she has not stated that he demanded these items in dowry at that time or any other time. As per evidence of PW-1 Girdharilal in para-7 both husband & wife used to exchange talks regarding things which were communicated by their daughter either to father or mother, therefore, if such a demand was raised at the time of Puja i.e. one month before the date of incident, then they must have communicated each other and even PW-10 said to have purchased television and gas stove, then she must have communicated the same to her husband Girdharilal, but while giving complaint Ex.P-1 to the Station House Officer, Police Station Bhatapara, these things were not mentioned by Girdharilal in the complaint. Had these demands were made by the accused persons, as has been stated by PW-10 Shashikiram, then in natural course the father of deceased ought to have mentioned all these things in the complaint Ex.P-1. Perusal of complaint Ex.P-1 made by the father of deceased shows that he raised doubt that his daughter has been murdered and even in penultimate paragraph of complaint it has been mentioned that main cause of murder of her daughter was dowry and as the marriage was solemnized by Raghvendra against the wishes of his brothers. But the things which have been mentioned by Shashikiran PW-10 in her evidence has not been mentioned in the complaint that just one month before the death of Sita alias Veena, there was a demand from the side of accused persons regarding television, scooter, gold &

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silver ornaments and gas stove. Assuming that there was some harassment and beating given by the accused Raghvendra to the deceased, but same cannot be attributed to the demand of dowry. From the evidence it can be inferred that there used to be some quarrel in the house but same was not on account of demand of dowry. There was no question of demand of dowry, as PW-1 Girdharilal, father of deceased & PW-5 Keshav Kumar, uncle of deceased, have not stated anything in their evidence regarding demand of dowry soon before the death of deceased. Even though the learned trial court has rejected the evidence of PW-2 Lakshman & PW-3 Bisjau on the ground that they are interested in the accused party in view of the fact that shop of PW-2 Laxshman is near to the house of accused persons and Bisjau (PW-3) was working at their residence. But, we are of the considered opinion that they are independent witnesses and at least about PW-2 Lakshman it cannot be said that in any way he was influenced or was under the influence of the accused persons. PW-2 in his cross-examination has stated that Raghvendra was residing separately from his family members and wife of Raghvendra oftenly used to behave like a mad person. On 2-3 occasions she came on the road with disheveled hairs & unarranged clothes and villagers used to bring her back in the house. Similar is the evidence of PW-3 Bijau that the wife of Raghvendra used to behave in an unusual manner.

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Therefore, for the foregoing reasons, we are of the considered opinion that the prosecution has not been able to establish the offence against the accused persons under Section 304-B of the I.P.C. by adducing legal clinching evidence and as such, the finding of the trial court convicting the accused persons under Section 304-B of the I.P.C. cannot be sustained and same is liable to be set aside.

In the result, the appeal of the appellants succeeds. Conviction and sentence imposed on the appellants Raghvendra, Virendra Kumar & Shivkumar are hereby set aside and they are acquitted of the charge under Section 304-B of the IPC. Accused/appellant No.1-Raghvendra, who is in custody since 18.1.1997, be set at liberty forthwith, if not required in connection with any other case. Whereas, Accused/appellant No.2-Virendra Kumar & accused/appellant No.3-Shivkumar are already on bail, therefore, their bail bonds are discharge.

Certified copy as per rules.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

[पीछे देखिये